

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DANIEL DEAN BALLARD,

Plaintiff

v.

STATE OF NEVADA,

Defendant

Case No. 3:21-cv-00460-RCJ-WGC

ORDER

I. DISCUSSION

On October 26, 2021, Plaintiff, an inmate in the custody of the Nevada Department of Corrections (“NDOC”), submitted an application to proceed *in forma pauperis* and a Notice of Motion. (ECF Nos. 1, 1-1). Plaintiff has not submitted a complaint or a fully complete application to proceed *in forma pauperis* on this Court's approved form.

It is unclear to the Court whether Plaintiff intended to file this matter in the U.S. District Court for the District of Nevada (“federal court”) or whether Plaintiff intended to file this matter in the Eighth Judicial District Court in Clark County, Nevada (“state court”). If Plaintiff intended to file this matter in federal court, Plaintiff must file a complaint and a fully complete application to proceed *in forma pauperis* on this Court's approved form or pay the full \$402 filing fee as further detailed in the paragraphs below. If Plaintiff intended to file this action in state court, Plaintiff may file a motion to voluntarily dismiss this case without prejudice and file his documents in state court.

In the event Plaintiff did intend to file this case in federal court, under Federal Rule of Civil Procedure 3, “[a] civil action is commenced by filing a complaint with the court.” Fed. R. Civ. P. 3. As such, the Court grants Plaintiff until **December 28, 2021** to submit a complaint to this Court.

Under 28 U.S.C. § 1915(a)(2) and Local Rule LSR 1-2, an inmate seeking to begin a civil action in this Court may apply to proceed *in forma pauperis* in order to file the civil action without prepaying the full \$402 filing fee. To apply for *in forma pauperis* status, the

1 inmate must submit all three of the following documents to the Court:

2 (1) a completed **Application to Proceed in Forma Pauperis for Inmate**, this
3 Court's approved form (i.e. pages 1 through 3 with the inmate's two signatures on
4 page 3),

5 (2) a **Financial Certificate** properly signed by both the inmate and a prison or jail
6 official (i.e. page 4 of this Court's approved form), and

7 (3) a copy of the **inmate's prison or jail trust fund account statement for the**
8 **previous six-month period.**

9 Accordingly, the Court denies Plaintiff's application to proceed *in forma pauperis*
10 (ECF No. 1) without prejudice because the application is incomplete. The Court will grant
11 Plaintiff a **one-time extension** to file a fully complete application to proceed *in forma*
12 *pauperis* containing all three of the required documents. Plaintiff will file a fully complete
13 application to proceed *in forma pauperis* on or before **December 28, 2021**. Absent
14 unusual circumstances, the Court will not grant any further extensions of time.

15 If Plaintiff is unable to file a fully complete application to proceed *in forma pauperis*
16 with all three required documents on or before **December 28, 2021**, this case will be
17 subject to dismissal without prejudice for Plaintiff to file a new case with the Court when
18 Plaintiff is able to acquire all three of the documents needed to file a fully complete
19 application to proceed *in forma pauperis*.

20 A dismissal without prejudice means Plaintiff does not give up the right to refile the
21 case with the Court, under a new case number, when Plaintiff has all three documents
22 needed to submit with the application to proceed *in forma pauperis*. Alternatively, Plaintiff
23 may choose not to file an application to proceed *in forma pauperis* and instead pay the
24 full filing fee of \$402 on or before **December 28, 2021** to proceed with this case.

25 **II. CONCLUSION**

26 For the foregoing reasons, IT IS ORDERED that Plaintiff will submit a complaint to
27 this Court on or before **December 28, 2021**.

28 IT IS FURTHER ORDERED that the Clerk of the Court will send to Plaintiff the

1 approved form for filing a 42 U.S.C. § 1983 complaint and instructions for the same. The
2 Clerk of the Court will also send Plaintiff a copy of his Notice of Motion. (ECF No. 1-1).

3 IT IS FURTHER ORDERED that Plaintiff's application to proceed *in forma pauperis*
4 (ECF No. 1) is denied without prejudice to file a new fully complete application to proceed
5 *in forma pauperis* with all three documents.

6 IT IS FURTHER ORDERED that the Clerk of the Court will send Plaintiff the
7 approved form application to proceed *in forma pauperis* by an inmate, as well as the
8 document entitled information and instructions for filing an *in forma pauperis* application.

9 IT IS FURTHER ORDERED that on or before **December 28, 2021**, Plaintiff will
10 either pay the full \$402 filing fee for a civil action (which includes the \$350 filing fee and
11 the \$52 administrative fee) or file with the Court:

12 (1) a completed **Application to Proceed in Forma Pauperis for Inmate** on this
13 Court's approved form (i.e. pages 1 through 3 of the form with the inmate's two
14 signatures on page 3),

15 (2) a **Financial Certificate** properly signed by both the inmate and a prison or jail
16 official (i.e. page 4 of this Court's approved form), and

17 (3) a copy of the **inmate's prison or jail trust fund account statement for the**
18 **previous six-month period.**

19 IT IS FURTHER ORDERED that, if Plaintiff does not file a complaint and a fully
20 complete application to proceed *in forma pauperis* with all three documents or pay the full
21 \$402 filing fee for a civil action on or before **December 28, 2021**, this case will be subject
22 to dismissal without prejudice for Plaintiff to refile the case with the Court, under a new
23 case number, when Plaintiff is able to file a complaint and has all three documents needed
24 to file a complete application to proceed *in forma pauperis* or pays the full \$402 filing fee.

25 DATED: November 1, 2021

26 William G. Cobb

27 UNITED STATES MAGISTRATE JUDGE
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